

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN

In Re:

REBECCA A. STRAUSBOUGH,

Debtor(s)

Case No. 09-63027-swr
Chapter 13
Hon. Steven W. Rhodes

REBECCA A. STRAUSBOUGH,

Plaintiffs,

v.

Adversary Case No. 09-05692

CO- OP SERVICES CREDIT UNION,

Defendant.

CHARLES J. SCHNEIDER (P27598)

LISA M. MANOOGIAN (P71407)

Attorney for Plaintiffs

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BUTLER, BUTLER & ROWSE-OBERLE, P.L.L.C.

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**MOTION TO REOPEN ADVERSARY CASE,
SET ASIDE ORDER GRANTING SUMMARY JUDGMENT**

Defendant, CO-OP SERVICES CREDIT UNION, through its counsel, BUTLER, BUTLER & ROWSE-OBERLE, P.L.L.C., for its Motion to Re-Open Adversary Case and Set Aside Order Granting Summary Judgment pursuant to Fed.R.Civ.Pro. 60 (a), (b)(1) and (6), states as follows:

1. Plaintiff and Defendant filed cross motions for summary judgment in the above captioned adversary proceeding.
2. On March 26, 2010, the Court issued an Opinion Granting Plaintiffs' Motions for

Summary Judgment.

3. On April 1, 2010, counsel for Defendants drafted a proposed Order Granting Plaintiff's Motions for Summary Judgment and Denying Defendant's Motions for Summary Judgment and forwarded it to Plaintiff's counsel for approval.
4. On April 8, 2010, Plaintiff's counsel returned said Order via facsimile with the executed Statement of Consent to Entry of Order.
5. On April 9, 2010, Defendant's counsel e-filed the Statement of Consent to Entry of Order and submitted the Order Granting Plaintiff's Motions for Summary Judgment and Denying Defendant's Motions for Summary Judgment.
6. On April 12, 2010, the Court entered an Order Granting Summary Judgment.
7. Said Order is not the Order attached to the Consent to Entry of Order e-filed on April 9, 2010.
8. There is no docket reference in either the adversary case or the main Chapter 13 case reflecting the submission of the Order that was entered.
9. Defendant has never reviewed this Order and does not approve of the Order for the following reasons:
 - a. The Order does not indicate that the Motion for Summary Judgment filed by the Defendant is denied thereby leaving the Motion without final closure on the docket;
 - b. The Order does not specify that the Defendant's 2nd mortgage may only be discharged upon the entry of a discharge pursuant to 11 U.S.C §1328(a) and not pursuant to 11 U.S.C §1328(b);
 - c. The Order does not address the treatment of Defendant's mortgage should the

Plaintiff sell the property during the pendency of the Plan;

d. Additionally, items b. and c. are as well as the majority of the language in the entered Order are more appropriately contained in an Order Confirming Chapter 13 Plan.

10. The Court decided the same issue presented in the above-captioned matter in Adversary Case No. 09-06810-swr, Christopher A. Tomasi v. Citizens Bank.

11. The same Consent to Entry of Order and Order Granting Plaintiff's Motions for Summary Judgment and Denying Defendant's Motions for Summary Judgment were submitted in that case and the Order was appropriately entered.

12. Defendant is uncertain how the Order that appears on the docket was entered and asserts it may be a clerical mistake, oversight or omission as the Order was never approved for entry by Defendant and presentment was not waived.

13. There is justification to set aside the Order Granting Summary Judgment based upon the foregoing. Additionally, the Court has the Order Granting Plaintiff's Motions for Summary Judgment and Denying Defendant's Motions for Summary Judgment Default and Default Judgment to which both parties consented to the entry.

WHEREFORE, Defendant requests that the Court reopen the Adversary Case, set aside the Order Granting Summary Judgment and enter the Order Granting Plaintiff's Motions for Summary Judgment and Denying Defendant's Motions for Summary Judgment to which the parties agree.

April 13, 2010

BUTLER, BUTLER & ROWSE-OBERLE, P.L.L.C.

/s/*Karen L. Rowse-Oberle*

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**ORDER REOPENING ADVERSARY CASE
AND SETTING ASIDE ORDER GRANTING SUMMARY JUDGMENT**

IT IS HEREBY ORDERED that the above captioned Adversary Case is Reopened.

IT IS FURTHER ORDERED that the Order Granting Summary Judgment entered on April 12, 2010 is set aside.

PROPOSED ORDER